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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**TRACY M. ERARDI
aka TRACY MARGUERITE ERARDI
aka TRACY M. MCCARTY
11153 N Ham Lane
Lodi, CA 95242**

Registered Nurse License No. 391009

RESPONDENT

Case No. 2012-732

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 6, 2012, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2012-732 against Tracy M. Erardi, aka Tracy Marguerite Erardi, aka Tracy M. McCarty (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about August 31, 1985, the Board of Registered Nursing (Board) issued Registered Nurse License No. 391009 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and expired on April 30, 2011 and has not been renewed.

3. On or about June 6, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2012-732, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

11153 N Ham Lane

1 Lodi, CA 95242.

2 4. Service of the Accusation was effective as a matter of law under the provisions of
3 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
4 124.

5 5. On or about June 11, 2012, the signed Certified Mail Receipt was returned to our
6 office indicating a delivery date of June 8, 2012.

7 6. Business and Professions Code section 2764 states:

8 The lapsing or suspension of a license by operation of law or by order or decision of
9 the board or a court of law, or the voluntary surrender of a license by a licentiate shall not deprive
10 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
11 against such license, or to render a decision suspending or revoking such license.

12 7. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
14 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
15 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
16 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

17 8. Respondent failed to file a Notice of Defense within 15 days after service of
18 the Accusation upon her, and therefore waived her right to a hearing on the merits of Accusation
19 No. 2012-732.

20 9. California Government Code section 11520 states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
22 agency may take action based upon the respondent's express admissions or upon other evidence
23 and affidavits may be used as evidence without any notice to respondent.

24 10. Pursuant to its authority under Government Code section 11520, the Board after
25 having reviewed the proof of service dated June 6, 2012, signed by Kami Pratab, finds
26 Respondent is in default. The Board will take action without further hearing and, based on
27 Accusation No. 2012-732 and the documents contained in Default Decision Investigatory
28 Evidence Packet in this matter which includes:

- 1 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2012-732,
2 Statement to Respondent, Notice of Defense (two blank copies), Request
3 for Discovery and Discovery Statutes (Government Code sections
4 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail
5 receipt or copy of returned mail envelopes;
- 6 Exhibit 2: License History Certification for Tracy M. Erardi, aka Tracy Marguerite
7 Erardi, aka Tracy M. McCarty, Registered Nurse License No. 391009;
- 8 Exhibit 3: Court and Arrest Records;
- 9 Exhibit 4: Affidavits of Annette Rodriguez and Kami Pratab;
- 10 Exhibit 5: Certification of costs by Board for investigation and enforcement in Case
11 No. 2012-732;
- 12 Exhibit 6: Declaration of costs by Office of the Attorney General for prosecution of
13 Case No. 2012-732.

14 The Board finds that the charges and allegations in Accusation No. 2012-732 are separately and
15 severally true and correct by clear and convincing evidence.

16 11. Taking official notice of Certification of Board Costs and the Declaration of Costs by
17 the Office of the Attorney General contained in the Default Decision Investigatory Evidence
18 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that
19 the reasonable costs for Investigation and Enforcement in connection with the Accusation are
20 \$5,786.50 as of November 21, 2012.

21 DETERMINATION OF ISSUES

- 22 1. Based on the foregoing findings of fact, Respondent Tracy M. Erardi, aka Tracy
23 Marguerite Erardi, aka Tracy M. McCarty has subjected her following license(s) to discipline:
- 24 a. Registered Nurse License No. 391009
- 25 2. The agency has jurisdiction to adjudicate this case by default.
- 26 3. The Board of Registered Nursing is authorized to revoke Respondent's license(s)
27 based upon the following violations alleged in the Accusation, which are supported by the
28 evidence contained in the Default Decision Investigatory Evidence Packet in this case.

- 1 a. Violation of Business and Professions Code section 2761(a) - Unprofessional
2 Conduct.
3 b. Violation of Business and Professions Code section 2761(f) - Conviction
4 substantially related to the qualifications, functions and duties of a
5 registered nurse.
6 c. Violation of Business and Professions Code section 2762(b) - Use of controlled
7 substance or alcohol to an extent or in a manner dangerous or injurious to
8 oneself and others.
9 d. Violation of Business and Professions Code section 2762(c) - Criminal
10 conviction involving alcoholic beverages or controlled substances.

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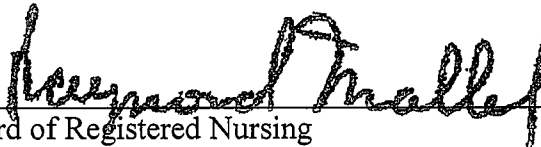
ORDER

IT IS SO ORDERED that Registered Nurse License No. 391009, heretofore issued to Respondent Tracy M. Erardi, aka Tracy Marguerite Erardi, aka Tracy M. McCarty, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MARCH 29, 2013.

It is so ORDERED FEBRUARY 27, 2013.



Board of Registered Nursing
Department of Consumer Affairs
State of California

Attachment:

Exhibit A: Accusation No. 2012-732

Exhibit A

Accusation No. 2012-732

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012-732**

13 **TRACY M. ERARDI, A.K.A.**
14 **TRACY MARGUERITE ERARDI, A.K.A.**
15 **TRACY M. MCCARTY**
16 **11153 N. Ham Lane**
17 **Lodi, CA 95242**

A C C U S A T I O N

18 **Registered Nurse License No. 391009**

19 **Respondent.**

20 **Complainant alleges:**

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
23 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
24 Department of Consumer Affairs.

25 **Registered Nurse License**

26 2. On August 31, 1985, the Board issued Registered Nurse License Number 391009 to
27 Tracy M. Erardi ("Respondent"), also known as Tracy Marguerite Erardi and Tracy M. McCarty.
28 The registered nurse license expired on April 30, 2011, and has not been renewed.

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STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct....,

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Criminal Convictions)**

5 8. Respondent has subjected her license to discipline pursuant to Code section 2761,
6 subdivision (f) in that Respondent has been convicted of the following crimes that are
7 substantially related to the qualifications, functions, and duties of a registered nurse:

8 a. On or about October 7, 2010, in the Superior Court, Stanislaus County, California, in
9 the matter entitled *People vs. Tracy Marguerite McCarty*, 2010, Case No. 1423676, Respondent
10 was convicted following her plea of nolo contendere to a violation of Vehicle Code section
11 23152, subdivision (b) (driving with a blood alcohol level of .08% or more), a misdemeanor. The
12 circumstances of the crime are that on or about August 1, 2010, Respondent was arrested for
13 driving under the influence of alcohol following a traffic stop. Respondent's blood alcohol
14 measured .18%.

15 b. On or about October 28, 2009, in the Superior Court, County of Santa Cruz,
16 California, in the matter entitled *People vs. Tracy Marguerite Erardi*, 2009, Case No. M50358,
17 Respondent was convicted following her plea of nolo contendere to a violation of Vehicle Code
18 section 23222, subdivision (a) (possession of an open container of an alcoholic beverage), an
19 infraction. The circumstances of the crime are that on or about August 24, 2009, Respondent was
20 arrested for driving under the influence of alcohol and having an open container of an alcoholic
21 beverage in her vehicle following a one vehicle collision. Respondent subsequently pled to the
22 lesser offense. Respondent's blood alcohol measured .04% and .05%.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Conviction of a Crime Involving Alcohol)**

25 9. Respondent has subjected her license to discipline pursuant to Code section 2761,
26 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
27 subdivision (c), in that Respondent has been convicted of crimes involving alcoholic beverages,
28 as more particularly set forth in paragraph 8, subparagraphs a and b, above.

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10. Respondent has subjected her license to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), as follows:

b. On or about January 19, 2011, while in the Board's Diversion Program, Respondent used the controlled substance Clonazepam to an extent or in a manner dangerous or injurious to herself or others, as evidenced by a positive drug screening for the controlled substance Clonazepam, which is not an approved medication in the Board's Diversion Program. Respondent was required to test after appearing unfocused and disoriented at a meeting.

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11. Respondent has subjected her license to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in that on or about August 8, 2010, while on duty as a home health nurse and caring for a 10-year old female child with a diagnosis of chondrodystrophy, Respondent was intoxicated and/or under the influence of a controlled substance. The patient's mother found Respondent on the floor of the patient's home conscious but unresponsive. Respondent was subsequently transported to Salinas Valley Memorial Hospital.

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1. Revoking or suspending Registered Nurse License Number 391009, issued to Tracy M. Erardi., also known as Tracy Marguerite Erardi and Tracy M. McCarty;

2. Ordering Tracy M. Erardi, also known as Tracy Marguerite Erardi and Tracy M. McCarty to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED:

June 6, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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